



HOUSE BILL 1224: Local Sales Tax Options/Econ. Devpt. Changes

2013-2014 General Assembly

Committee: House Finance
Introduced by: Rep. Presnell
Analysis of: Fourth Edition

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SUMMARY: *This bill is in the House for concurrence. Part I would authorize counties to use up to one-half percent (1/2%) of the total local sales and use tax for public education, for public transportation, for general purposes, or for a combination of these purposes. It would also cap the overall total local sales and use tax rate at two and one-half percent (2½%).*

Parts II-IV would expand the eligibility criteria for the Job Maintenance and Capital Development Fund (JMAC). Part III of the bill would create the Job Catalyst Fund (JCF) inside the Department of Commerce. Part IV would provide an additional \$14M to the Job Development Investment Grant (JDIG) cap for the 2013-2015 biennium and provide limited flexibility with respect to the impact of JCF grants on the cost/benefit analysis required for JDIG grants.

Part V would allow NC companies to sell \$1 million (\$2 million in some cases) of unregistered securities to NC residents. The Secretary of State would be authorized to charge a nonrefundable filing fee of \$150 for filing a notice for unregistered securities.

PART I: LOCAL SALES TAX OPTIONS

CURRENT LAW & BILL ANALYSIS: Part I establishes one new local sales and use tax option of up to ½%-cent for education, increases from ¼% to ½% the rate at which 94 counties may levy the public transportation tax, increases from ¼% to ½% the rate at which counties may levy a tax for general purposes, and caps the overall local sales and use tax rate at two and one-half percent (2½%). Under the bill, a county may levy any combination of the three local option sales and use taxes so long as the total local sales and use tax rate in the county does not exceed two and one-half percent (2 ½%). Plus, a county would not be required to reach the cap with any particular levy.

New Article 43A: County Sales Tax for Public Education

Section 1.1 would give counties the authority to levy a local sales and use tax at a rate of up to one-half percent (1/2%) if the majority of voters approve the levy of the tax in a referendum. The rate of tax must be in an increment of ¼% and must be at a rate that, if levied, would not result in a total local rate in the county in excess of two and one-half percent (2 1/2%). There is no limitation on a county's ability to also levy a local sales and use tax under Article 43 as long as the total local rate in the county does not exceed 2 ½%.

The proceeds of the tax are not shared with the cities and may only be used as follows:

- Public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes.
- Salaries of classroom teachers, salaries of classroom teacher assistants, and supplements of classroom teacher salaries. A classroom teacher is an employee of a local board of education employed as a teacher who spends at least seventy percent (70%) of his or her work time in



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classroom instruction and a classroom teacher assistant is an employee of a local board of education employed as a teacher assistant who spends at least seventy percent (70%) of his or her work time assisting in a classroom.

- Financial support of community colleges, including funds to supplement State financial support of community colleges.

Changes to Article 43: Local Government Sales and Use Tax for Public Transportation

Under current law, counties may levy, upon referendum, a local sales and use tax to be used only for public transportation if the county or at least one unit of local government in the county operates a public transportation system. "Public transportation system" is broadly defined as any combination of real and personal property established for purposes of public transportation, but specifically excludes streets, roads, and highways (except to the extent they are dedicated to public transportation vehicles).

The rate of tax is ½% for the following six counties: Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake.¹ The rate of tax is ¼% for all other counties. Currently, the only counties levying a tax under this Article are Mecklenburg,² Durham,³ and Orange⁴ Counties. None of the 94 counties levy the 1/4¢ tax under this Article.

Section 1.4 would give all counties the ability to levy the public transit tax at the same rate by increasing from 1/4¢ to 1/2¢ the maximum rate of tax that the 94 counties under Part 6 of Article 43 may levy for public transit. It would also allow the other six counties to levy the tax at the rate of ¼% or 1/2% depending on what the total local rate is at the time of the referendum. If a county chooses to hold a referendum to levy the public transit tax, the rate must be at a rate that, if levied, would not result in a total local rate in the county that exceeds two and one-half percent (2 1/2%). There is no limitation on a county's ability to also levy a local sales and use tax under new Article 43A as long as the total local rate in the county does not exceed 2 ½%.

Under Article 43, Durham, Orange, and Wake Counties are authorized to create a special taxing district as a regional public transportation authority and levy a tax at ½% to be used to finance a public transportation system. At this time, Durham and Orange are the only counties that make up the district. If Wake County decides to join the district, then it must do so at the ½% rate because, constitutionally, a tax rate must be uniform within a single taxing district. Under this bill, Wake County retains the ability to join the district at ½% or it could levy a tax at ¼% or ½% for public transportation separate and apart from Durham and Orange.

Changes to Article 46: One-Quarter Cent (1/4¢) County Sales and Use Tax

In 2007, the General Assembly gave counties a local-option, quarter-cent sales tax. The tax must be approved by voters in a referendum before it can be adopted. The proceeds of the tax are not shared with the cities and may be used for any general purpose.

Since the enactment of the authorization, 94 referendums have been held in 59 counties; of those, 27 were approved.

¹ Of these six counties, Durham and Orange are the only ones that also levy the quarter-cent tax under Article 46. Guilford and Mecklenburg have the quarter-cent on the November 2014 ballot.

² Mecklenburg County passed a one-half cent sales tax for transit, with 58% of the voters in favor, in November 1998. The county began levying the tax April 1, 1999.

³ Durham County passed a one-half cent sales tax for transit, with 60% of the voters in favor, in November 2011. The county began levying the tax April 1, 2013.

⁴ Orange County passed a one-half cent sales tax for transit, with 59% of the voters in favor, in November 2012. The county began levying the tax April 1, 2013.

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Section 1.6 modifies the current Article 46 as follows:

- It increases from ¼% to ½% the maximum rate of tax that may be levied under this Article.
- For referenda held on or after January 1, 2015, the proceeds of this tax may not be used for public transportation systems as that term is defined in Article 43.
- The counties that currently levy the Article 46 tax may continue to levy the tax alone or they could opt to increase the rate to ½% or pair it with the public transportation tax or the public education tax, but only at the rate of ¼%.
- This bill does not impact a county's ability to have the 1/4% tax on the November 2014 ballot unless the county is already at a rate of 2.5% or higher. There are four counties that have voted to put this issue on the November 2014 ballot: Bladen, Guilford, Mecklenburg, and Richmond. All but Mecklenburg have a total rate of local sales and use tax that is less than two and one-half percent (2 ½%), which means that Mecklenburg would be prohibited from holding a referendum in November on this tax. Wake, Rockingham, and Carteret are also considering whether to add this issue to the November ballot.

Rate Cap for all Local Sales and Use Taxes

The local sales and use tax rate varies among the counties, ranging from 2% to 2.75%.⁵ Under current law, there are 6 counties that *could* have a total local sales and use tax rate of two and three-quarters (2.75%), for a total State and local rate of 7.5%. Those counties are: Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake. To reach the maximum, a county would have to levy the first cent, the first one-half cent, the second one-half cent, the one-half cent public transportation tax, and the one-quarter cent tax. To date, only 2 of the 6 counties levy the maximum: Durham and Orange. That rate became effective in those counties in April of 2013.

The maximum that could be levied in the other 94 counties is two and one-half percent (2½%). The reason for the difference is that those 94 counties may only levy a one-quarter cent (1/4%) tax for public transportation. The remaining local taxes for those counties are the same.

Under the bill, the total local sales and use tax rate that a county may levy would be two and one-half percent (2½%). The bill carves out an exception for the two counties that currently levy a 2.75% local tax, but if either of those counties repeals any of the local sales and use taxes it currently levies, bringing the county rate below 2.75%, that county would become subject to the 2.5% cap.

Allocation of Article 43B Proceeds by County Commissioners

Section 1.2 of the bill would authorize a board of county commissioners to direct the amount of funds derived from the tax levied under Article 43A to be used for salaries of classroom teachers, salaries of classroom teacher assistants, and supplements of classroom teacher salaries. Without this language, the board could allocate funds to instructional services generally, but it could not allocate funds more specifically within that category of expenditures. In addition, a board of education would need approval from the board of county commissioners before it could decrease the amount of funds that were allocated by the board of county commissioners. **Section 1.3** has similar provisions with regard to allocating funds for community colleges.

Under current law, local board of education is required to prepare a budget using the uniform budget format and submit that budget to the board of county commissioners no later than May 15 of each year. The board of county commissioners must then determine the amount of county revenues to be

⁵See table in the **BACKGROUND** section for this Part of the Bill Analysis.

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appropriated in the county budget to the local board of education and may “in its discretion, allocate part or all of its appropriation by purpose, function, or project as defined in the uniform budget format.” Once the board of county commissioners makes its appropriation, the board of education adopts its budget resolution subject to certain requirements found in G.S. 115C-432. Amendments to the budget resolution are allowed after adoption, but are subject to certain limitations found in G.S. 115C-433.

For community colleges, a similar process is followed.⁶ The board of trustees of a community college prepares a budget using forms developed by the State Board of Community Colleges. Community college budgets are broken into different parts requiring approval by different groups as follows:

- State Current Fund Budget – Approved by the board of trustees and State Board of Community Colleges.
- County Current Fund Budget - Approved by the board of trustees and the local tax-levying authority.
- Institutional Fund Budget - Approved by the board of trustees.
- Plant Fund Budget - Approved by the board of trustees, partly by the local tax-levying authority and partly by the State Board of Community Colleges.

G.S. 115D-55 requires the tax-levying authority to determine the amount of county revenues to be appropriated in the county budget to the community college and allows the authority to “allocate part or all of an appropriation by purpose, function, or project as defined in the budget manual as adopted by the State Board of Community Colleges.” Once the tax-levying authority has made its appropriation, the budget is submitted to the State Board of Community Colleges for approval. G.S. 115D-56 requires that, once approved, the board of trustees must adopt a final budget resolution, and permits under G.S. 115D-58 that amendments be made to the budget subject to rules and regulations adopted by the State Board of Community Colleges and certain limits on amendments to local appropriations established in statute.

BACKGROUND: The following table identifies the current total local sales and use tax rate in the counties.

| Local Rate of Sales & Use Tax | Counties | |
|-------------------------------|--|--|
| 2.75% | Durham Orange | |
| 2.50% | Mecklenburg | |
| 2.25% | Alexander Buncombe Cabarrus Catawba Cumberland Duplin Edgecombe Greene Halifax Harnett Haywood Hertford | Lee Martin Montgomery New Hanover Onslow Pitt Randolph Robeson Rowan Sampson Surry Wilkes |
| 2.00% | Remaining 73 counties | |

⁶Article 4A of Chapter 115D establishes the budget process for community colleges.

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The following table sets out how the local sales and use taxes may be used, how they are distributed, and whether their enactment required a referendum.

| Statutory Authority | Use of Proceeds | | Distribution Method | Referendum Requirement |
|----------------------------------|--|--|---|-----------------------------|
| 1st 1-cent (Article 39) | Any lawful purpose | | Point of collection | Permitted, but not required |
| 1st ½-cent (Article 40) | Counties – 30% school capital | | Per capita * Adjustment formula | Permitted but not required |
| 2nd ½-cent (Article 42) | Counties – 60% school capital | | Point of collection | Permitted, but not required |
| ½-cent or ¼-cent (Article 43) | Counties/Transportation Authorities – public transportation systems only | | Per capita among county and units of local government in county that operate public transportation system | Required |
| | <u>½-cent</u> Part 2: Mecklenburg Part 4: Triangle (Wake, Durham, Orange) Part 5: Triad (Forsyth, Guilford) | <u>¼-cent</u> Part 6 – All other counties | | |
| ¼-cent (Article 46) | Any lawful purpose | | Point of collection – distributed to county only | Required |

PART II: JMAC MODIFICATIONS

CURRENT LAW: The General Assembly created JMAC in 2007 as a non-reverting account in the Department of Commerce.⁷ The purpose of JMAC is to maintain jobs in the State. Three companies have received a grant from JMAC. The Department may not enter more than five agreements, and this act does not change that limitation. The total aggregate cost of all agreements for grants from JMAC is limited to \$69 million, and the annual cost of any one agreement is \$6 million. A grant agreement obligates the State to make a series of grant payments over a period of time, but it does not authorize the taxing power of the State to be pledged.

BILL ANALYSIS: The bill expands eligibility for a JMAC grant for large manufacturing employers in four ways. First, the bill allows eligibility for a large manufacturing employer if it is investing in its manufacturing process by enhancing pollution controls or transitioning from use of coal to natural gas for efficiency or emissions purposes. Previously, the conversion had to be for the purpose of changing the product it manufactures. Second, the bill lowers the investment threshold from \$65 million to \$50 million. Third, the bill increases the time for the investment from three to five years. Finally, the bill allows the large manufacturing employer to be in an area that is tier 2, instead of a tier 1, if the area has a population of less than 60,000 as of 7/1/13, the manufacturer employs at least 800 FTEs at the project, and the manufacturer maintains that level of employment throughout the term of the grant.

The bill also increases the total aggregate cost limitation of all JMAC agreements from \$69 million to \$79 million.

PART III: JOB CATALYST FUND

BILL ANALYSIS: Part III of the bill creates the Job Catalyst Fund (JCF), a new special, non-reverting account in the Department of Commerce, for the purpose of providing funds to local governmental units

⁷ S. L. 2007-552, G.S. 143B-437.11; S. L. 2008-187 recodified the statute as G.S. 143B-437.012.

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for certain manufacturing projects. The guidelines and administration of the Fund is vested solely in the Secretary of Commerce, subject to the following minimum requirements that apply to each grant from the JCF:

1. A business at a project must agree, for the greater of 10 years or the term of the grant plus five years, to the following:
 - a. To create 500, 800, or 1,200 full-time jobs for development tier one, two, or three areas, respectively.
 - b. To invest at the project \$20M, \$35M, or \$50M in real and/or personal property for development tier one, two, or three areas, respectively.
 - c. To satisfy a wage requirement equal to a percentage of the average wage for all insured private employers in the county. If tiers one or two, the percentage is 100%. If tier three, the percentage is 110%.
 - d. To provide health insurance.
 - e. To avoid notices of overdue tax debts and citations under OSHA for willful serious violations or failing to abate serious violations.
2. The local governmental unit agrees to match State funds at a rate of 3%, 6%, or 9% for tier one, two, or three areas, respectively.
3. The funds are used to acquire/improve land or infrastructure, for facility development, or for capital investment and used for manufacturing projects.
4. Funds are not used in favor of jobs created or property investments for which a tax credit under Article 3J was given and are not used for retail facility development or for semiprofessional sports teams/clubs.

Local governmental units must provide a means to recapture from the business at a project an amount equal to that disbursed from the Fund in the event the business fails to satisfy any of the requirements for the disbursement, and the local governmental unit must, in turn, reimburse the Fund. The Department must report annually on each grant awarded, the status of each project, the number and development tier area of created positions, a listing of employment levels at projects and changes to employment levels from the preceding year, wage levels, number of awards for new/existing businesses, environmental impact, geographic distribution, and developed guidelines/changes to guidelines.

For purposes of guidelines for and administration of the program, the Secretary is exempt from the APA and must, instead, allow 20 days' notice before the effective date of guidelines (via publication) and 15 additional days for comment.

PART IV: JDIG MODIFICATIONS

BILL ANALYSIS: In the 2013 budget, the annual cap for JDIG commitments was modified from a calendar year basis to a fiscal biennium basis for the 2013-15 fiscal biennium only. This modification brought forward from the 2015 fiscal year an additional \$7.5M in JDIG commitment availability. **Subsection 4(a)** of the bill would increase the cap for JDIG commitment by an additional \$14M for the 2013-15 fiscal biennium.

Subsection 4(b) concerns the requirement in JDIG to conduct a cost/benefit analysis to determine whether a JDIG award is appropriate. Currently, all costs are considered for purposes of determining whether a JDIG award is appropriate. Until July 1, 2015, the bill would allow disregarding of costs associated with an award from the newly created Job Catalyst Fund if, absent that award, the cost/benefit

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analysis would affirm the propriety of making a JDIG grant. After July 1, 2015, the analysis would consider all costs, including JCF awards for purposes of determining whether a JDIG award is appropriate.⁸

Subsection 4(c) would add a monthly reporting requirement for JDIG to the Finance committees (when in session) or RLSC (when not in session) and the Fiscal Research Division on (i) the total liability, remaining availability under the cap, and maximum amount of possibility liability for JDIG grants in an applicable period and (ii) a listing of each grant awarded by business, including the grant term, withholdings used to determine grant amount, maximum annual and total liabilities and jobs, wages, investments, and Utility Account transfers anticipated from the project.⁹

PART V: CROWD FUNDING

Part V of the bill would add a new exemption to the list of transactions that are exempt from the registration and filing requirements for the offer or sale of securities. Specifically, the bill creates the Invest NC exemption that requires:

- **NC Issuer** – The issuer must be a North Carolina business entity formed under the laws of the State and registered with the Secretary of State.
- **Intrastate Offering** – The transaction must meet the federal exemption for an intrastate offering, which means that the issuer and all purchasers must be located in NC, that purchasers cannot transfer the securities for a period of time, that a certain percentage of the proceeds must be used in the State, and that the issuer cannot sell or have an economic impact outside the state.
- **\$1/\$2 Million Maximum Per Offering** – If the issuer has not undergone a financial audit, the maximum amount of cash raised under the exemption must not exceed \$1 million minus the amount received in the 12 months before the exemption. If the issuer has undergone a financial audit, the maximum amount allowed is \$2 million minus the amount received in the 12 months before the exemption. Offers and sales to controlling persons of the issuer are exempt from the funding cap. The funding cap will be adjusted for inflation every fifth year.
- **\$2,000 Maximum Per Purchaser** – The issuer has not accepted more than \$2,000 from a single purchaser, unless the purchaser is an accredited investor.
- **Notice to Secretary of State** – The issuer must file a notice with the Secretary of State no less than 10 days before beginning to offer securities under the exemption. The notice must include a disclosure statement with specified financial information that will be provided to investors and an escrow agreement between the issuer and a NC bank providing that funds received from investors will be held until the minimum target offering amount is reached and that investors may cancel their purchase if the target is not reached.
- **Issuer Not Investment Company** – The issuer may not be an investment company.
- **Notice of Unregistered Securities and Limitations on Resale** – The issuer must conspicuously display on the cover of the disclosure document a notice to investors that the securities being offered have not been registered under federal or State law, that the investor bears the risk of the investment, and that the securities are subject to limitations on resale.
- **Written Acknowledgement by Purchaser** – The issuer shall require each purchaser to certify in writing that the purchaser understands and acknowledges the securities are a high-risk

⁸ The one-year disregarding of costs provision was added to the bill by Senate floor amendment.

⁹ This subsection was added to the bill by a Senate floor amendment.

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speculative business venture; no state or federal governmental authority has reviewed the offering; the securities are illiquid; and the purchaser may be subject to tax on a share of the taxable income and losses of the company whether or not the purchaser sold or otherwise disposed of the securities.

- **Registration and Recordkeeping by Internet Web Sites** – If the offer and sale are made through an internet web site, the issuer and the website must provide certain information to the Secretary of State, including evidence that both are NC businesses and that all purchasers are NC residents.
- **Notice and Recordkeeping by Escrow Holder** – The bank holding the escrow funds shall notify the Secretary of State of the receipt of payments for securities and the identity and residence of the investors.
- **Registration Exemption for Web Site** – The web site is exempt from the requirement to register as a dealer or salesperson if the web site meets specified conditions.
- **Registration Exemption for Issuer's Employees** – The executives and management of the issuer are exempt from the requirement to register as a dealer or salesperson as long as they do not receive any remuneration or commission for offering and selling securities under the exemption.
- **Quarterly Reporting** – The issuer must provide a quarterly report to investors until no securities issued under the exemption are outstanding.
- **Disqualification** – The exemption does not apply if the issuer or someone affiliated with the issuer is subject to any disqualification under State or federal law.
- **Rules** – The Secretary of State may adopt rules to implement the exemption and protect investors.

The bill authorizes the Secretary of State to charge a nonrefundable filing fee of \$150 for filing the exemption notice. The bill also authorizes the Secretary of State to adopt rules to implement the exemption on an expedited basis for the first year.

EFFECTIVE DATE: Part I is effective when it becomes law. Part II of the act becomes effective July 1, 2014. Parts III and IV of the act are effective when they become law.